

MINUTES

Interagency Migrant Worker Policy Committee Meeting

March 29, 2005

The quarterly meeting of the Interagency Migrant Worker Policy Committee was held on March 29, 2005, beginning at 9:30 a.m. at the Virginia Employment Commission (VEC). The Chairman of the Committee, VEC Commissioner Dolores A. Esser, called the meeting to order.

The following were in attendance:

Kenny Annis, Chair of the MSFW Board
Richard Cagan, MSFW Board Representative
David Altman, Virginia Department of Alcoholic Beverage Control
Jane Brown, Virginia Department of Social Services
Ray Davenport, Commissioner, Virginia Department of Labor and Industry
Jack Turner, Virginia Employment Commission
Michelle Castellow-Rivera, Virginia Employment Commission
Joe Dictor, Virginia Department of Agriculture and Consumer Services
Sam Lupica, Virginia Workers' Compensation Commission
Perida Giles, Virginia Department of Agriculture and Consumer Services
Ron Thompson, Virginia Department of Motor Vehicles
Joyce Fogg, Virginia Employment Commission
Evelyn Lewis, Virginia Employment Commission

Commissioner Esser welcomed everyone in attendance, and asked them to introduce themselves. After the introductions, Ms. Esser apologized that the Policy Committee missed having the December meeting and for any inconvenience it may have caused.

Commissioner Esser requested approval of the minutes for the September 20, 2004 meeting. There being no changes, David Altman moved to accept the minutes, Ron Thompson seconded, and the minutes were approved.

Discussion of State Legislation affecting Migrant and Seasonal Farm Workers

For those who deal with the General Assembly, Commissioner Esser stated that this has been an interesting short session.

DMV

Commissioner Esser stated that there was an article in the Richmond Times-Dispatch last week relating to DMV. Mr. Thompson of the Department of Motor Vehicles stated that the article was pertaining to House Bill 1625, which did not pass. This bill would require applicants to speak English before they could get a driver's license. Originally, the applicants would have to speak and write English, but with changes in the legislation, it was changed to speaking only; the bill

was killed in the Courts of Justice Committee. Commissioner Esser said that there was another bill regarding the identification that workers have to prove at DMV. This bill was a carryover from last year's session. There is apparently still some confusion about what identification someone has to prove in order to obtain a driver's license. Mr. Turner said the DMV website is very specific about what documents the DMV will accept. Mr. Annis stated that the application for a license goes into great detail about what a person must have to obtain an identification card. He concurred that the driver's license is the main issue, because a crew will need drivers authorized to drive buses, and to obtain this authorization, they must have certain documents, and one of them is the driver's license. This is getting bad on the state and national level. There is a lot of opposition to draft legislation to require anyone to establish a legal presence to have a driver's license. Mr. Altman said in his discussions with John Boswell, a former Policy Committee member, Mr. Boswell had had discussions with a Congressman, and they are moving towards a national identification card of some sort, not a social security card. Mr. Annis feels the bills are too complex, and that establishing a legal presence will become a major problem. Commissioner Esser inquired about a previous conversation regarding temporary licenses, and Mr. Turner stated that if foreigners had licenses from their own country, they could temporarily drive in this country for six months. Ms. Fogg stated that Christian Swager with the Commonwealth's Attorney Office, was going to make contact with them about this, but if the Policy Committee agrees, we can go ahead and make contact and invite him to a meeting. Mr. Annis said the problem occurs when the driver's must have CDL licenses and they have limited knowledge of English and cannot read and understand the highway signs. Ms. Castellow said they must have a valid driver's license with passenger endorsement, and with a capacity of 15 or more passengers. This requires a special DMV test driving a bus. Mr. Thompson said they can take the CDL test in Spanish. Mr. Annis stated that there was also legislation affecting workers' compensation in which workers would have to be permanent residents in order to receive workers' compensation. This concerned the MSFW Board and Agriculture because a few years ago, we were able to get this changed in order that workers would not have to be citizens to receive workers' compensation. Mr. Lupica stated that this bill did not pass.

Agriculture

Commissioner Esser stated there were some bills on Agriculture to buy USA products only. There was concern by the Agriculture community about foreign products being brought into the country. Senator Wagner introduced a bill last year to buy USA products only, but it was killed. Mr. Cagan stated that a bill did pass that would increase penalties to employers for not paying wages due to workers; and Mr. Davenport concurred that the bill passed. There had been some problems in Northern Virginia, specifically Alexandria and the company originating from Maryland regarding day laborers/migrant workers not being paid for asbestos removal. There are two additional sites in Prince William and Fairfax also being involved in this. There is a loitering aspect that brought attention to this, and is a big problem. Commissioner Davenport stated that from the standpoint of undocumented workers coming into this country, there is a requirement from the employers to make sure the workers have proper documentation. There was a large amount of legislation about breaking the law, and what stuck in his mind was the part about "with breaking the law, what do you not understand?" There are requirements from employers to make sure that the workers understand this. Mr. Annis stated that even the employer is caught up in a catch-22. Legal Aid would like for the employee to go back to Mexico and file there claim and not come back to the U. S. for any hearings. If the growers have

any workers' compensation coverage, then the workers have to provide by that; if they do not have workers' compensation, then the workers can take the grower into court and sue. It seems that it has no affect whether the worker is undocumented or not. How can a person go into the U. S. Court and sue if they are an undocumented worker? Mr. Turner stated that there are various court cases that states, just because you are not documented means that you lose your rights. When you go outside the sole remedy of workers' compensation, you open yourself up to all sorts of horrendous activities. The non-agriculture community does not have Legal Aide protecting their workers, so they are not aware of the sole source implication like Agriculture is, which has been hit by it already, and that's the dilemma.

Discussion of Federal Legislation affecting Migrant and Seasonal Farm Workers

Ms. Esser stated that Jack Turner had sent her an email regarding Agriculture jobs from last year that had been carried over to this year. Mr. Turner stated that he gave Ms. Fogg a printout that he received from Sharon with Telemon with one of the latest pleas from Bruce Goldstein. If anyone has been watching the news, President Bush met the President of Mexico last week, and it looked like to me that President Bush almost washed his hands of what he was advocating, in that he said, "I'm not a legislator, I will talk with Congress, but I can't make them pass it." It's hard to say how this is going to go. The President is interested in some kind of guest work or program. The Ag jobs are dealing in whether or not it passes. One side is pushing for it, describing what Joyce passed out, and the other side is saying we'll see. Mr. Annis said this was held up last year when it was all ready to go because there is a split in the Republican Party and caused the President to hold it up last year. The sticking point is that a certain faction of President Bush's team does not want to award people with citizenship when they are illegal. They consider giving citizenship to illegal aliens as an award of criminal activity.

Commissioner Esser stated that there is a public comment on proposed labor and homeland security purpose procedure changes for issuance of H2B visas, and DOL is seeking comments on this proposal to allow employers to obtain farmworkers based on an attestation instead of a labor certification. She asked Mr. Turner if he had any followup since the public comment that was done on February 28? Mr. Turner stated that he did not, and H2B is not really something that he stays on hard. Mr. Richard Primmer handles the H2B visas. Mr. Annis stated that if you look at the regulations, H2B is about a paragraph, and they are bringing in people from out of the country that they do not have to provide a lot, in which the H2A employer does, and I don't see that changing. Mr. Turner stated that the current issue that is hot with the H2B is that there are 66,000 of them allowed annually nationwide, and the various associations of employers that use them have already gone and gotten all 66,000. For instance, the seafood industry in Virginia is now stating "where are we going to get our workers?" Since it happened chronologically, people later in the season didn't have an equal bite at the 66,000 and now they don't have the workers. It's going to be seriously contentious. They need workers. Mr. Cagen asked, "For comparison purposes, what are the numbers for H2A?" Mr. Turner stated that number is around 25,000. Ms. Casterlow stated that last year Virginia had 2,943. She said she was informed by someone in the Philadelphia Regional Office that there were a lot of people in DC lobbying to get rid of the cap, but they simply said there's draft legislation that basically states the H2B program will go to a processing center just like the H2As and this function will be eliminated from the state. It may even be moved to CIS and let them handle the processing. Commissioner Esser stated that the

VEC was informed in December that effective January 1 all forms the state was working on would be moved to the two processing centers that the USDOL has for processing the applications, and the state is out of the business with it now. In March 2001, when VEC had the amnesty, Virginia received over 18,000 applications in one day. That created a huge backlog for the state. Now they are trying to get through the backlog. The law states, "first come, first served". For someone who filed in 2004-2005, their application would not be looked at for a couple of years. There were just a few caviats; such as if an applicant had a child who is aging out, it could get your application processed sooner.

Of the H2B applications that have come in, almost all have been approved. Of all the H2A applications, about 150 or less have been denied. Ms. Esser stated that the VEC documents what we have and DOL gives the final approval.

Mr. Annis stated that one of the things that is affecting legislation now is that he is receiving emails from Africa for a job, an attorney from South America for a job; and that on the West Coast they are bringing in Chinese under H2A certifications; they are bringing in farmers; apple growers are getting them and bringing them in. Mr. Annis is not sure he is opposed to this. The transportation to get them here is unbelievable. The burden on agencies to translate in Chinese is costly. As for homeland security, some of the things are affecting homeland security.

Commissioner Esser stated that legislation for WIA Reauthorization is up for vote in Congress, with the House version being passed recently. However, state workforce agencies are planning on the President's version of the legislation, which involves a submission of a joint Job Service-Workforce Investment plan, to encompass a myriad of state agencies, to be completed by May 31, 2005.

Mr. Cagan added that the Head Start Act is also up for reauthorization, which will include some language for block grants. However, the Administration has assured that the Head Start program will remain a national program. It will be important for lobbyists to focus on maintaining funding for the migrant and seasonal aspect of Head Start.

Old Business

Mr. Turner noted that the Virginia Employment Commission website now supports all documents for the Migrant and Seasonal Farmworkers Board and Interagency Migrant Worker Policy Committee. In addition to rosters and meeting minutes, the Migrant and Seasonal Farmworkers Board Biennium Report can be found on the website.

New Business

Commissioner Davenport provided a brochure to the committee on the upcoming annual and Safety and Health Conference on June 8-19, 2005 in Richmond, which will deal with safety and health in all communities. Additionally, Commissioner Davenport noted that there will be a workshop dealing with business Spanish, and invited committee members to invite their respective agencies to attend.

Mr. Cagan noted that there would be a Farmworker Community Connection Conference, sponsored by the Central Virginia Legal Aid Society in Charlottesville on May 4, 2005. Contact Mr. Cagan for more details on the conference.

On May 17, 2005, the Virginia Rural Health Association and the Virginia Department of Health are sponsoring the annual Migrant Health Conference.

Commissioner Esser also noted that the Migrant and Seasonal Farmworkers Board would meet on April 19, 2005.

Mr. Annis discussed the impact of the unionization of H2A workers, using North Carolina as an example. The workers boycotted wages and eventually agreed to a legal settlement brought against the National Growers Association by the North Carolina Legal Aid Society. Mr. Annis and Mr. Turner noted that this settlement would impact the Mid-Atlantic region.

With no further business to discuss, the Interagency Migrant Worker Policy Committee meeting was adjourned.